

Remarks

This amendment is responsive to the official action of Paper No. 6, mailed November 19, 2003, and is accompanied by an Extension under 37 C.F.R. §1.136(a) and the required fee. The number of claims remains within the number permitted under fees previously paid. No new matter is presented.

Claim 10 was considered indefinite for a term considered to lack clear antecedent basis, which has now been corrected. Claims 1-10 and 12-14 were rejected as obvious over Haverstraw (6,230,989), alone or in combination with Ridenour (5,129,584) or Joubran (5,961,046). Applicant is pleased to note that allowable subject matter was indicated as to claim 11, which has been placed in independent form.

Reconsideration is requested as to the rejection of claim 1 and the claims depending from claim 1. The Haverstraw reference fails to disclose or to lead routinely to the invention defined in claim 1 as a whole. It is only by starting from an objective that is found only in applicant's disclosure and not in Haverstraw, namely to provide in a jet disk terminating a housing at least two groups of jet outlets, one group of which is continuously in operation and delivers an aerated jet, whereas a second group of jet outlets can be switched in by a switching device.

It is not possible to extend the teachings of Haverstraw to the invention except by presuming new flow and switching arrangements that Haverstraw does not support. It is an aspect of applicant's invention, which aspect is particularly claimed, that one group of outlets is continuously 'on' and aerated, and another group is switched. A disclosure that lacks such an aspect fails to meet the invention claimed as a whole under 35 U.S.C. §102. In order to support a rejection under §103, there must be a logical incentive apparent from the prior art to support the necessary modification that would meet the invention claimed as a whole. However the prior art relied upon, namely Haverstraw, lacks any teaching or suggestion of such an incentive.

The examiner refers to Haverstraw's nozzles 128 as the aerated jets. These are discussed in Haverstraw at col. 8, lines 18-31. However there is no teaching or

suggestion that these jets should be always 'on' whereas another group is switched on and off. Nor is there any basis to believe from Haverstraw that such a modification would be advantageous or even possible.

Haverstraw expressly teaches that nozzles 128 are intended to achieve a "champagne" flow effect. Haverstraw teaches that this desired effect relies on a particular curvilinear orientation of the apertures in a line "which is slightly more arcuate than the arched band of regular spray apertures." (Col. 8, lines 21-23). Furthermore, Haverstraw states that the curvilinear orientation is important in order to obtain the desired effect. (Col. 8, line 26.) Haverford also specifically states that the nozzles are positioned so that each forms a separate rope or stream of water. (Col. 8, line 29.)

It would interfere with the function of nozzles 128 to modify them by providing an additional group of apertures that turns on and off while nozzles 128 remain on. This would provide some other effect that Haverstraw does not teach or suggest, while interfering with the effect that Haverstraw teaches to be the desirable one. Thus, there is no basis to conclude that the invention is obvious.

The examiner admits in the official action that Haverstraw does not disclose the aerated jet[s] being delivered continuously, but states that the capability in Haverstraw to select output modes would lead to such a combination. The examiner points out that both groups of jet outlets (128 and an unnamed other group) are connected to in each case one chamber 156 and 236 and a switching device opens and closes flow into the chamber associated with the outlets, citing Col. 6, lines 64-66.

However, the passages cited by the examiner do not appear to be related in a way that would lead routinely to applicant's invention claimed as a whole. Col. 6, lines 64-66 state that control valve 82 diverts water from the incoming flow path 74 "to either, or both, of the outgoing flow paths 76, 78." There are a variety of rather involved flow paths in Haverstraw. Nevertheless, even assuming *arguendo* that the flow paths 76, 78 lead respectively to the champagne apertures 128 and to another group, the ability to

select either or both of the flow path teaches directly away from having an always 'on' aerated group and another group that is switched.

For these reasons, it is not possible without the exercise of hindsight, to conclude that Haverstraw leads routinely to applicant's invention defined in claim 1 as a whole. All the rejections rely on Haverstraw for the aspect of a group of always 'on' aerated apertures in combination with a group of switched apertures, and upon review Haverstraw is seen not only to lack such teaching, but to lead routinely to different features, particularly wherein the user selects one or another or both of two groups.

The official action lacks a prima facie basis for the rejection of claim 1 under 35 U.S.C. §103. All the claims now incorporate the subject matter of claim 1 (which also has substantially been copied into amended claim 11). Thus all the claims are allowable as now presented.

The claims as amended particularly and distinctly define the subject matter regarded as the invention. The differences between the invention and the prior art are such that the subject matter claimed, as a whole, is not shown to have been known or obvious. Reconsideration and allowance are requested.

Respectfully submitted,

Date: May 20, 2004



Stephan P. Gribok
Reg. No. 29,643
Duane Morris LLP
One Liberty Place, 1650 Market Street
Philadelphia, PA 19103-7396
tel. 215-979-1283
fax. 215-979-1020
SPGRIBOK@DUANEMORRIS.COM

Docket No. 3201-216
[D4700-227]